

AMENDED IN SENATE MAY 3, 2016
AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 983

Introduced by Senator Morrell

February 10, 2016

An act to amend Sections ~~2923.3, 2924, 2924c, 2924d, 2924f,~~ and 2934a of, and to amend and repeal Section 2924.11 of, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 983, as amended, Morrell. Mortgages and deeds of trust.

~~Existing law imposes various requirements to be satisfied prior to exercising a power of sale under a mortgage or deed of trust. Existing law, with respect to residential real property containing up to 4 dwelling units, requires a mortgagee, trustee, beneficiary, or authorized agent to provide to the mortgagor or trustor a copy of the recorded notice of default and a copy of the recorded notice of sale.~~

~~This bill would instead require the mortgagee, trustee, beneficiary, or authorized agent to provide the mortgagor or trustor with a copy of the notice of default indicating the recording date and a copy of the notice of sale indicating the recording date.~~

Existing law requires a legal owner to maintain vacant residential property purchased at a foreclosure sale or acquired by the owner through foreclosure under a mortgage or deed of trust and authorizes a governmental entity to impose a civil fine, as specified, for a violation. Existing law requires a governmental entity, prior to imposing a fine or penalty for failure to maintain a vacant property, as specified, to provide the owner of that property with a notice of the violation and an opportunity to correct that violation.

This bill would provide that a trustee ~~under a deed of trust or a trustee~~ named in a recorded substitution of trustee is not a legal owner or owner, as applicable, for purposes of the provisions described above. ~~This bill would also provide that a trustee under a deed of trust is not responsible for any obligation or failure to maintain or register a property subject to foreclosure.~~

Existing law requires a mortgagee, beneficiary, or authorized agent to record a rescission of a notice of default or cancel a pending trustee sale, if applicable, upon the borrower executing a permanent foreclosure prevention alternative. Existing law, in the case of a short sale, requires the rescission or cancellation of the pending trustee's sale to occur when the short sale has been approved and proof of funds or financing has been provided, as specified.

This bill would make a clarifying change by eliminating the reference to rescission in the case of a pending trustee's sale.

Existing law limits the amount of trustee's or attorney's fees that may be charged in connection with the enforcement of certain terms of obligation upon default in payment under a mortgage or deed of trust prior to reinstatement of a monetary default, or until the notice of sale is deposited in the mail, or otherwise at any time prior to the decree of foreclosure, to a base amount not to exceed \$300 for an unpaid principal balance sum of \$150,000 or less, or \$250 plus specified additional percentages of unpaid principal sums, if the unpaid principal balance exceeds \$150,000. Existing law, in lieu of an authorized charge, limits the amount of trustee's or attorney's fees after the notice of sale is deposited in the mail and until the property is sold by power of sale, to a base amount not to exceed \$425 for an unpaid principal balance sum of \$150,000 or less, or \$360 plus specified additional percentages of unpaid principal sums, if the unpaid principal balance exceeds \$150,000.

This bill would increase the base limitations on the amount of those trustee's or attorney's fees by \$50.

~~Existing law, before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, requires notice of the sale to be given. Existing law requires the notice of sale to contain specified information regarding the property and the sale, and to be recorded with the county recorder, as specified. Existing law, on and after April 1, 2012, also requires the notice of sale to contain language notifying potential bidders of specified risks involved in bidding on property at a trustee's sale.~~

~~This bill would revise the language notifying potential bidders of specified risks involved in bidding at a trustee's sale.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 2923.3 of the Civil Code is amended to~~
2 ~~read:~~

3 ~~2923.3. (a) With respect to residential real property containing~~
4 ~~no more than four dwelling units, a mortgagee, trustee, beneficiary,~~
5 ~~or authorized agent shall provide to the mortgagor or trustor a copy~~
6 ~~of the notice of default indicating the recording date with an~~
7 ~~attached separate summary document of the notice of default in~~
8 ~~English and the languages described in Section 1632, as set forth~~
9 ~~in subdivision (c), and a copy of the notice of sale indicating the~~
10 ~~recording date with an attached separate summary document of~~
11 ~~the information required to be contained in the notice of sale in~~
12 ~~English and the languages described in Section 1632, as set forth~~
13 ~~in subdivision (d). These summaries are not required to be recorded~~
14 ~~or published. This subdivision shall become operative on April 1,~~
15 ~~2013, or 90 days following the issuance of the translations by the~~
16 ~~Department of Business Oversight pursuant to subdivision (b),~~
17 ~~whichever is later.~~

18 ~~(b) (1) The Department of Business Oversight shall provide a~~
19 ~~standard translation of the statement in paragraph (1) of subdivision~~
20 ~~(c), and of the summary of the notice of default, as set forth in~~
21 ~~paragraph (2) of subdivision (c) in the languages described in~~
22 ~~Section 1632.~~

23 ~~(2) The Department of Business Oversight shall provide a~~
24 ~~standard translation of the statement in paragraph (1) of subdivision~~
25 ~~(d), and of the summary of the notice of sale, as set forth in~~
26 ~~paragraph (2) of subdivision (d).~~

27 ~~(3) The department shall make the translations described in~~
28 ~~paragraphs (1) and (2) available without charge on its Internet Web~~
29 ~~site. Any mortgagee, trustee, beneficiary, or authorized agent who~~
30 ~~provides the department's translations in the manner prescribed~~
31 ~~by this section shall be in compliance with this section.~~

32 ~~(c) (1) The following statement shall appear in the languages~~
33 ~~described in Section 1632 at the beginning of the notice of default:~~

1
2 NOTE: THERE IS A SUMMARY OF THE INFORMATION
3 IN THIS DOCUMENT ATTACHED.

4
5 (2) The following summary of key information shall be attached
6 to the copy of the notice of default provided to the mortgagor or
7 trustor:

8
9 SUMMARY OF KEY INFORMATION

10 The attached notice of default was sent to [name of the trustor],
11 in relation to [description of the property that secures the mortgage
12 or deed of trust in default]. This property may be sold to satisfy
13 your obligation and any other obligation secured by the deed of
14 trust or mortgage that is in default. [Trustor] has, as described in
15 the notice of default, breached the mortgage or deed of trust on
16 the property described above.

17 IMPORTANT NOTICE: IF YOUR PROPERTY IS IN
18 FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR
19 PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT
20 ACTION, and you may have the legal right to bring your account
21 in good standing by paying all of your past due payments plus
22 permitted costs and expenses within the time permitted by law for
23 reinstatement of your account, which is normally five business
24 days prior to the date set for the sale of your property. No sale date
25 may be set until approximately 90 days from the date the attached
26 notice of default may be recorded (which date of recordation
27 appears on the notice).

28 This amount is _____ as of ____ (date) _____ and
29 will increase until your account becomes current.

30 While your property is in foreclosure, you still must pay other
31 obligations (such as insurance and taxes) required by your note
32 and deed of trust or mortgage. If you fail to make future payments
33 on the loan, pay taxes on the property, provide insurance on the
34 property, or pay other obligations as required in the note and deed
35 of trust or mortgage, the beneficiary or mortgagee may insist that
36 you do so in order to reinstate your account in good standing. In
37 addition, the beneficiary or mortgagee may require as a condition
38 to reinstatement that you provide reliable written evidence that
39 you paid all senior liens, property taxes, and hazard insurance
40 premiums.

1 ~~Upon your written request, the beneficiary or mortgagee will~~
2 ~~give you a written itemization of the entire amount you must pay.~~
3 ~~You may not have to pay the entire unpaid portion of your account,~~
4 ~~even though full payment was demanded, but you must pay all~~
5 ~~amounts in default at the time payment is made. However, you~~
6 ~~and your beneficiary or mortgagee may mutually agree in writing~~
7 ~~prior to the time the notice of sale is posted (which may not be~~
8 ~~earlier than three months after this notice of default is recorded)~~
9 ~~to, among other things, (1) provide additional time in which to~~
10 ~~cure the default by transfer of the property or otherwise; or (2)~~
11 ~~establish a schedule of payments in order to cure your default; or~~
12 ~~both (1) and (2).~~

13 ~~Following the expiration of the time period referred to in the~~
14 ~~first paragraph of this notice, unless the obligation being foreclosed~~
15 ~~upon or a separate written agreement between you and your creditor~~
16 ~~permits a longer period, you have only the legal right to stop the~~
17 ~~sale of your property by paying the entire amount demanded by~~
18 ~~your creditor.~~

19 ~~To find out the amount you must pay, or to arrange for payment~~
20 ~~to stop the foreclosure, or if your property is in foreclosure for any~~
21 ~~other reason, contact:~~

22 _____
23 (Name of beneficiary or mortgagee)

24 _____
25 (Mailing address)

26 _____
27 (Telephone)

28 ~~If you have any questions, you should contact a lawyer or the~~
29 ~~governmental agency that may have insured your loan.~~

30 ~~Notwithstanding the fact that your property is in foreclosure,~~
31 ~~you may offer your property for sale, provided the sale is concluded~~
32 ~~prior to the conclusion of the foreclosure.~~

33 ~~Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO~~
34 ~~NOT TAKE PROMPT ACTION.~~

35 ~~If you would like additional copies of this summary, you may~~
36 ~~obtain them by calling [insert telephone number].~~

37 ~~(d) (1) The following statement shall appear in the languages~~
38 ~~described in Section 1632 at the beginning of the notice of sale:~~

1 NOTE: THERE IS A SUMMARY OF THE INFORMATION
2 IN THIS DOCUMENT ATTACHED.

3
4 ~~(2) The following summary of key information shall be attached~~
5 ~~to the copy of the notice of sale provided to the mortgagor or~~
6 ~~trustor:~~

7
8 SUMMARY OF KEY INFORMATION

9 The attached notice of sale was sent to [trustor], in relation to
10 [description of the property that secures the mortgage or deed of
11 trust in default].

12 ~~YOU ARE IN DEFAULT UNDER A (Deed of trust or~~
13 ~~mortgage) DATED _____. UNLESS YOU TAKE ACTION TO~~
14 ~~PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A~~
15 ~~PUBLIC SALE.~~

16 IF YOU NEED AN EXPLANATION OF THE NATURE OF
17 THE PROCEEDING AGAINST YOU, YOU SHOULD
18 CONTACT A LAWYER.

19 The total amount due in the notice of sale is _____.

20 Your property is scheduled to be sold on [insert date and time
21 of sale] at [insert location of sale].

22 However, the sale date shown on the attached notice of sale may
23 be postponed one or more times by the mortgagee, beneficiary,
24 trustee, or a court, pursuant to Section 2924g of the California
25 Civil Code. The law requires that information about trustee sale
26 postponements be made available to you and to the public, as a
27 courtesy to those not present at the sale. If you wish to learn
28 whether your sale date has been postponed, and, if applicable, the
29 rescheduled time and date for the sale of this property, you may
30 call [telephone number for information regarding the trustee's sale]
31 or visit this Internet Web site [Internet Web site address for
32 information regarding the sale of this property], using the file
33 number assigned to this case [case file number]. Information about
34 postponements that are very short in duration or that occur close
35 in time to the scheduled sale may not immediately be reflected in
36 the telephone information or on the Internet Web site. The best
37 way to verify postponement information is to attend the scheduled
38 sale.

39 If you would like additional copies of this summary, you may
40 obtain them by calling [insert telephone number].

1 ~~(e) Failure to provide these summaries to the mortgagor or~~
2 ~~trustor shall have the same effect as if the notice of default or notice~~
3 ~~of sale were incomplete or not provided.~~

4 ~~(f) This section sets forth a requirement for translation in~~
5 ~~languages other than English, and a document complying with the~~
6 ~~provisions of this section may be recorded pursuant to subdivision~~
7 ~~(b) of Section 27293 of the Government Code. A document that~~
8 ~~complies with this section shall not be rejected for recordation on~~
9 ~~the ground that some part of the document is in a language other~~
10 ~~than English.~~

11
12 SEC. 2. ~~Section 2924 of the Civil Code is amended to read:~~

13 ~~2924. (a) Every transfer of an interest in property, other than~~
14 ~~in trust, made only as a security for the performance of another~~
15 ~~act, is to be deemed a mortgage, except when in the case of~~
16 ~~personal property it is accompanied by actual change of possession,~~
17 ~~in which case it is to be deemed a pledge. Where, by a mortgage~~
18 ~~created after July 27, 1917, of any estate in real property, other~~
19 ~~than an estate at will or for years, less than two, or in any transfer~~
20 ~~in trust made after July 27, 1917, of a like estate to secure the~~
21 ~~performance of an obligation, a power of sale is conferred upon~~
22 ~~the mortgagee, trustee, or any other person, to be exercised after~~
23 ~~a breach of the obligation for which that mortgage or transfer is a~~
24 ~~security, the power shall not be exercised except where the~~
25 ~~mortgage or transfer is made pursuant to an order, judgment, or~~
26 ~~decree of a court of record, or to secure the payment of bonds or~~
27 ~~other evidences of indebtedness authorized or permitted to be~~
28 ~~issued by the Department of Business Oversight, or is made by a~~
29 ~~public utility subject to the provisions of the Public Utilities Act,~~
30 ~~until all of the following apply:~~

31 ~~(1) The trustee, mortgagee, or beneficiary, or any of their~~
32 ~~authorized agents shall first file for record, in the office of the~~
33 ~~recorder of each county wherein the mortgaged or trust property~~
34 ~~or some part or parcel thereof is situated, a notice of default. That~~
35 ~~notice of default shall include all of the following:~~

36 ~~(A) A statement identifying the mortgage or deed of trust by~~
37 ~~stating the name or names of the trustor or trustors and giving the~~
38 ~~book and page, or instrument number, if applicable, where the~~
39 ~~mortgage or deed of trust is recorded or a description of the~~
40 ~~mortgaged or trust property.~~

1 ~~(B) A statement that a breach of the obligation for which the~~
2 ~~mortgage or transfer in trust is security has occurred.~~

3 ~~(C) A statement setting forth the nature of each breach actually~~
4 ~~known to the beneficiary and of his or her election to sell or cause~~
5 ~~to be sold the property to satisfy that obligation and any other~~
6 ~~obligation secured by the deed of trust or mortgage that is in~~
7 ~~default.~~

8 ~~(D) If the default is curable pursuant to Section 2924e, the~~
9 ~~statement specified in paragraph (1) of subdivision (b) of Section~~
10 ~~2924e.~~

11 ~~(2) Not less than three months shall elapse from the filing of~~
12 ~~the notice of default.~~

13 ~~(3) Except as provided in paragraph (4), after the lapse of the~~
14 ~~three months described in paragraph (2), the mortgagee, trustee,~~
15 ~~or other person authorized to take the sale shall give notice of sale,~~
16 ~~stating the time and place thereof, in the manner and for a time~~
17 ~~not less than that set forth in Section 2924f.~~

18 ~~(4) Notwithstanding paragraph (3), the mortgagee, trustee, or~~
19 ~~other person authorized to take sale may record a notice of sale~~
20 ~~pursuant to Section 2924f up to five days before the lapse of the~~
21 ~~three-month period described in paragraph (2), provided that the~~
22 ~~date of sale is no earlier than three months and 20 days after the~~
23 ~~recording of the notice of default.~~

24 ~~(5) Until January 1, 2018, whenever a sale is postponed for a~~
25 ~~period of at least 10 business days pursuant to Section 2924g, a~~
26 ~~mortgagee, beneficiary, or authorized agent shall provide written~~
27 ~~notice to a borrower regarding the new sale date and time, within~~
28 ~~five business days following the postponement. Information~~
29 ~~provided pursuant to this paragraph shall not constitute the public~~
30 ~~declaration required by subdivision (d) of Section 2924g. Failure~~
31 ~~to comply with this paragraph shall not invalidate any sale that~~
32 ~~would otherwise be valid under Section 2924f. This paragraph~~
33 ~~shall be inoperative on January 1, 2018.~~

34 ~~(6) No entity shall record or cause a notice of default to be~~
35 ~~recorded or otherwise initiate the foreclosure process unless it is~~
36 ~~the holder of the beneficial interest under the mortgage or deed of~~
37 ~~trust, the original trustee or the substituted trustee under the deed~~
38 ~~of trust, or the designated agent of the holder of the beneficial~~
39 ~~interest. No agent of the holder of the beneficial interest under the~~
40 ~~mortgage or deed of trust, original trustee or substituted trustee~~

1 under the deed of trust may record a notice of default or otherwise
2 commence the foreclosure process except when acting within the
3 scope of authority designated by the holder of the beneficial
4 interest.

5 (b) (1) In performing acts required by this article, both of the
6 following shall apply:

7 (A) The trustee shall incur no liability for any good faith error
8 resulting from reliance on information provided in good faith by
9 the beneficiary regarding the nature and the amount of the default
10 under the secured obligation, deed of trust, or mortgage.

11 (B) A trustee shall not be subject to Title 1.6c (commencing
12 with Section 1788) of Part 4.

13 (2) A trustee under a deed of trust shall not be a legal owner or
14 owner, as applicable, for purposes of Section 2929.3 or 2929.4.

15 (3) A trustee under a deed of trust shall not be responsible for
16 any obligation or failure to maintain or register a property subject
17 to foreclosure.

18 (e) A recital in the deed executed pursuant to the power of sale
19 of compliance with all requirements of law regarding the mailing
20 of copies of notices or the publication of a copy of the notice of
21 default or the personal delivery of the copy of the notice of default
22 or the posting of copies of the notice of sale or the publication of
23 a copy thereof shall constitute prima facie evidence of compliance
24 with these requirements and conclusive evidence thereof in favor
25 of bona fide purchasers and encumbrancers for value and without
26 notice.

27 (d) All of the following shall constitute privileged
28 communications pursuant to Section 47:

29 (1) The mailing, publication, and delivery of notices as required
30 by this section.

31 (2) Performance of the procedures set forth in this article.

32 (3) Performance of the functions and procedures set forth in
33 this article if those functions and procedures are necessary to carry
34 out the duties described in Sections 729.040, 729.050, and 729.080
35 of the Code of Civil Procedure.

36 (e) There is a rebuttable presumption that the beneficiary
37 actually knew of all unpaid loan payments on the obligation owed
38 to the beneficiary and secured by the deed of trust or mortgage
39 subject to the notice of default. However, the failure to include an
40 actually known default shall not invalidate the notice of sale and

1 the beneficiary shall not be precluded from asserting a claim to
2 this omitted default or defaults in a separate notice of default.

3 (f) ~~With respect to residential real property containing no more~~
4 ~~than four dwelling units, a separate document containing a~~
5 ~~summary of the notice of default information in English and the~~
6 ~~languages described in Section 1632 shall be attached to the notice~~
7 ~~of default provided to the mortgagor or trustor pursuant to Section~~
8 ~~2923.3.~~

9 ~~SEC. 3.~~

10 *SECTION 1.* Section 2924.11 of the Civil Code, as added by
11 Section 14 of Chapter 86 of the Statutes of 2012, is amended to
12 read:

13 2924.11. (a) If a foreclosure prevention alternative is approved
14 in writing prior to the recordation of a notice of default, a mortgage
15 servicer, mortgagee, trustee, beneficiary, or authorized agent shall
16 not record a notice of default under either of the following
17 circumstances:

18 (1) The borrower is in compliance with the terms of a written
19 trial or permanent loan modification, forbearance, or repayment
20 plan.

21 (2) A foreclosure prevention alternative has been approved in
22 writing by all parties, including, for example, the first lien investor,
23 junior lienholder, and mortgage insurer, as applicable, and proof
24 of funds or financing has been provided to the servicer.

25 (b) If a foreclosure prevention alternative is approved in writing
26 after the recordation of a notice of default, a mortgage servicer,
27 mortgagee, trustee, beneficiary, or authorized agent shall not record
28 a notice of sale or conduct a trustee's sale under either of the
29 following circumstances:

30 (1) The borrower is in compliance with the terms of a written
31 trial or permanent loan modification, forbearance, or repayment
32 plan.

33 (2) A foreclosure prevention alternative has been approved in
34 writing by all parties, including, for example, the first lien investor,
35 junior lienholder, and mortgage insurer, as applicable, and proof
36 of funds or financing has been provided to the servicer.

37 (c) When a borrower accepts an offered first lien loan
38 modification or other foreclosure prevention alternative, the
39 mortgage servicer shall provide the borrower with a copy of the
40 fully executed loan modification agreement or agreement

1 evidencing the foreclosure prevention alternative following receipt
2 of the executed copy from the borrower.

3 (d) A mortgagee, beneficiary, or authorized agent shall record
4 a rescission of a notice of default or cancel a pending trustee's
5 sale, if applicable, upon the borrower executing a permanent
6 foreclosure prevention alternative. In the case of a short sale, the
7 cancellation of the pending trustee's sale shall occur when the
8 short sale has been approved by all parties and proof of funds or
9 financing has been provided to the mortgagee, beneficiary, or
10 authorized agent.

11 (e) The mortgage servicer shall not charge any application,
12 processing, or other fee for a first lien loan modification or other
13 foreclosure prevention alternative.

14 (f) The mortgage servicer shall not collect any late fees for
15 periods during which a complete first lien loan modification
16 application is under consideration or a denial is being appealed,
17 the borrower is making timely modification payments, or a
18 foreclosure prevention alternative is being evaluated or exercised.

19 (g) If a borrower has been approved in writing for a first lien
20 loan modification or other foreclosure prevention alternative, and
21 the servicing of that borrower's loan is transferred or sold to
22 another mortgage servicer, the subsequent mortgage servicer shall
23 continue to honor any previously approved first lien loan
24 modification or other foreclosure prevention alternative, in
25 accordance with the provisions of the act that added this section.

26 (h) This section shall apply only to mortgages or deeds of trust
27 described in Section 2924.15.

28 (i) This section shall not apply to entities described in
29 subdivision (b) of Section 2924.18.

30 (j) This section shall remain in effect only until January 1, 2018,
31 and as of that date is repealed, unless a later enacted statute, that
32 is enacted before January 1, 2018, deletes or extends that date.

33 ~~SEC. 4.~~

34 *SEC. 2.* Section 2924.11 of the Civil Code, as added by Section
35 14 of Chapter 87 of the Statutes of 2012, is repealed.

36 ~~SEC. 5.~~

37 *SEC. 3.* Section 2924c of the Civil Code is amended to read:
38 2924c. (a) (1) Whenever all or a portion of the principal sum
39 of any obligation secured by deed of trust or mortgage on real
40 property or an estate for years therein hereafter executed has, prior

1 to the maturity date fixed in that obligation, become due or been
2 declared due by reason of default in payment of interest or of any
3 installment of principal, or by reason of failure of trustor or
4 mortgagor to pay, in accordance with the terms of that obligation
5 or of the deed of trust or mortgage, taxes, assessments, premiums
6 for insurance, or advances made by beneficiary or mortgagee in
7 accordance with the terms of that obligation or of the deed of trust
8 or mortgage, the trustor or mortgagor or his or her successor in
9 interest in the mortgaged or trust property or any part thereof, or
10 any beneficiary under a subordinate deed of trust or any other
11 person having a subordinate lien or encumbrance of record thereon,
12 at any time within the period specified in subdivision (e), if the
13 power of sale therein is to be exercised, or, otherwise at any time
14 prior to entry of the decree of foreclosure, may pay to the
15 beneficiary or the mortgagee or their successors in interest,
16 respectively, the entire amount due, at the time payment is
17 tendered, with respect to (A) all amounts of principal, interest,
18 taxes, assessments, insurance premiums, or advances actually
19 known by the beneficiary to be, and that are, in default and shown
20 in the notice of default, under the terms of the deed of trust or
21 mortgage and the obligation secured thereby, (B) all amounts in
22 default on recurring obligations not shown in the notice of default,
23 and (C) all reasonable costs and expenses, subject to subdivision
24 (c), that are actually incurred in enforcing the terms of the
25 obligation, deed of trust, or mortgage, and trustee's or attorney's
26 fees, subject to subdivision (d), other than the portion of principal
27 as would not then be due had no default occurred, and thereby cure
28 the default theretofore existing, and thereupon, all proceedings
29 theretofore had or instituted shall be dismissed or discontinued
30 and the obligation and deed of trust or mortgage shall be reinstated
31 and shall be and remain in force and effect, the same as if the
32 acceleration had not occurred. This section does not apply to bonds
33 or other evidences of indebtedness authorized or permitted to be
34 issued by the Department of Business Oversight or made by a
35 public utility subject to the Public Utilities Code. For the purposes
36 of this subdivision, the term "recurring obligation" means all
37 amounts of principal and interest on the loan, or rents, subject to
38 the deed of trust or mortgage in default due after the notice of
39 default is recorded; all amounts of principal and interest or rents
40 advanced on senior liens or leaseholds that are advanced after the

1 recordation of the notice of default; and payments of taxes,
2 assessments, and hazard insurance advanced after recordation of
3 the notice of default. If the beneficiary or mortgagee has made no
4 advances on defaults that would constitute recurring obligations,
5 the beneficiary or mortgagee may require the trustor or mortgagor
6 to provide reliable written evidence that the amounts have been
7 paid prior to reinstatement.

8 (2) If the trustor, mortgagor, or other person authorized to cure
9 the default pursuant to this subdivision does cure the default, the
10 beneficiary or mortgagee or the agent for the beneficiary or
11 mortgagee shall, within 21 days following the reinstatement,
12 execute and deliver to the trustee a notice of rescission that rescinds
13 the declaration of default and demand for sale and advises the
14 trustee of the date of reinstatement. The trustee shall cause the
15 notice of rescission to be recorded within 30 days of receipt of the
16 notice of rescission and of all allowable fees and costs.

17 No charge, except for the recording fee, shall be made against
18 the trustor or mortgagor for the execution and recordation of the
19 notice which rescinds the declaration of default and demand for
20 sale.

21 (b) (1) The notice, of any default described in this section,
22 recorded pursuant to Section 2924, and mailed to any person
23 pursuant to Section 2924b, shall begin with the following
24 statement, printed or typed thereon:

25
26 “IMPORTANT NOTICE [14-point boldface type if printed or
27 in capital letters if typed]
28

29 IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE
30 YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD
31 WITHOUT ANY COURT ACTION, [14-point boldface type if
32 printed or in capital letters if typed] and you may have the legal
33 right to bring your account in good standing by paying all of your
34 past due payments plus permitted costs and expenses within the
35 time permitted by law for reinstatement of your account, which is
36 normally five business days prior to the date set for the sale of
37 your property. No sale date may be set until approximately 90 days
38 from the date this notice of default may be recorded (which date
39 of recordation appears on this notice).

1 This amount is _____ as of _____
2 (Date)

3
4 and will increase until your account becomes current.

5 While your property is in foreclosure, you still must pay other
6 obligations (such as insurance and taxes) required by your note
7 and deed of trust or mortgage. If you fail to make future payments
8 on the loan, pay taxes on the property, provide insurance on the
9 property, or pay other obligations as required in the note and deed
10 of trust or mortgage, the beneficiary or mortgagee may insist that
11 you do so in order to reinstate your account in good standing. In
12 addition, the beneficiary or mortgagee may require as a condition
13 to reinstatement that you provide reliable written evidence that
14 you paid all senior liens, property taxes, and hazard insurance
15 premiums.

16 Upon your written request, the beneficiary or mortgagee will
17 give you a written itemization of the entire amount you must pay.
18 You may not have to pay the entire unpaid portion of your account,
19 even though full payment was demanded, but you must pay all
20 amounts in default at the time payment is made. However, you
21 and your beneficiary or mortgagee may mutually agree in writing
22 prior to the time the notice of sale is posted (which may not be
23 earlier than three months after this notice of default is recorded)
24 to, among other things, (1) provide additional time in which to
25 cure the default by transfer of the property or otherwise; or (2)
26 establish a schedule of payments in order to cure your default; or
27 both (1) and (2).

28 Following the expiration of the time period referred to in the
29 first paragraph of this notice, unless the obligation being foreclosed
30 upon or a separate written agreement between you and your creditor
31 permits a longer period, you have only the legal right to stop the
32 sale of your property by paying the entire amount demanded by
33 your creditor.

34 To find out the amount you must pay, or to arrange for payment
35 to stop the foreclosure, or if your property is in foreclosure for any
36 other reason, contact:

37
38 _____
39 (Name of beneficiary or mortgagee)
40 _____

1 (Mailing address)

2
3 _____
4 (Telephone)

5 If you have any questions, you should contact a lawyer or the
6 governmental agency that may have insured your loan.

7 Notwithstanding the fact that your property is in foreclosure,
8 you may offer your property for sale, provided the sale is concluded
9 prior to the conclusion of the foreclosure.

10 Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO**
11 **NOT TAKE PROMPT ACTION.** [14-point boldface type if printed
12 or in capital letters if typed]”

13 Unless otherwise specified, the notice, if printed, shall appear
14 in at least 12-point boldface type.

15 If the obligation secured by the deed of trust or mortgage is a
16 contract or agreement described in paragraph (1) or (4) of
17 subdivision (a) of Section 1632, the notice required herein shall
18 be in Spanish if the trustor requested a Spanish language translation
19 of the contract or agreement pursuant to Section 1632. If the
20 obligation secured by the deed of trust or mortgage is contained
21 in a home improvement contract, as defined in Sections 7151.2
22 and 7159 of the Business and Professions Code, which is subject
23 to Title 2 (commencing with Section 1801), the seller shall specify
24 on the contract whether or not the contract was principally
25 negotiated in Spanish and if the contract was principally negotiated
26 in Spanish, the notice required herein shall be in Spanish. No
27 assignee of the contract or person authorized to record the notice
28 of default shall incur any obligation or liability for failing to mail
29 a notice in Spanish unless Spanish is specified in the contract or
30 the assignee or person has actual knowledge that the secured
31 obligation was principally negotiated in Spanish. Unless specified
32 in writing to the contrary, a copy of the notice required by
33 subdivision (c) of Section 2924b shall be in English.

34 (2) Any failure to comply with the provisions of this subdivision
35 shall not affect the validity of a sale in favor of a bona fide
36 purchaser or the rights of an encumbrancer for value and without
37 notice.

38 (c) Costs and expenses that may be charged pursuant to Sections
39 2924 to 2924i, inclusive, shall be limited to the costs incurred for
40 recording, mailing, including certified and express mail charges,

1 publishing, and posting notices required by Sections 2924 to 2924i,
2 inclusive, postponement pursuant to Section 2924g not to exceed
3 fifty dollars (\$50) per postponement and a fee for a trustee's sale
4 guarantee or, in the event of judicial foreclosure, a litigation
5 guarantee. For purposes of this subdivision, a trustee or beneficiary
6 may purchase a trustee's sale guarantee at a rate meeting the
7 standards contained in Sections 12401.1 and 12401.3 of the
8 Insurance Code.

9 (d) Trustee's or attorney's fees that may be charged pursuant
10 to subdivision (a), or until the notice of sale is deposited in the
11 mail to the trustor as provided in Section 2924b, if the sale is by
12 power of sale contained in the deed of trust or mortgage, or,
13 otherwise at any time prior to the decree of foreclosure, are hereby
14 authorized to be in a base amount that does not exceed three
15 hundred fifty dollars (\$350) if the unpaid principal sum secured
16 is one hundred fifty thousand dollars (\$150,000) or less, or three
17 hundred dollars (\$300) if the unpaid principal sum secured exceeds
18 one hundred fifty thousand dollars (\$150,000), plus one-half of 1
19 percent of the unpaid principal sum secured exceeding fifty
20 thousand dollars (\$50,000) up to and including one hundred fifty
21 thousand dollars (\$150,000), plus one-quarter of 1 percent of any
22 portion of the unpaid principal sum secured exceeding one hundred
23 fifty thousand dollars (\$150,000) up to and including five hundred
24 thousand dollars (\$500,000), plus one-eighth of 1 percent of any
25 portion of the unpaid principal sum secured exceeding five hundred
26 thousand dollars (\$500,000). Any charge for trustee's or attorney's
27 fees authorized by this subdivision shall be conclusively presumed
28 to be lawful and valid where the charge does not exceed the
29 amounts authorized herein. For purposes of this subdivision, the
30 unpaid principal sum secured shall be determined as of the date
31 the notice of default is recorded.

32 (e) Reinstatement of a monetary default under the terms of an
33 obligation secured by a deed of trust, or mortgage may be made
34 at any time within the period commencing with the date of
35 recordation of the notice of default until five business days prior
36 to the date of sale set forth in the initial recorded notice of sale.

37 In the event the sale does not take place on the date set forth in
38 the initial recorded notice of sale or a subsequent recorded notice
39 of sale is required to be given, the right of reinstatement shall be
40 revived as of the date of recordation of the subsequent notice of

1 sale, and shall continue from that date until five business days
2 prior to the date of sale set forth in the subsequently recorded notice
3 of sale.

4 In the event the date of sale is postponed on the date of sale set
5 forth in either an initial or any subsequent notice of sale, or is
6 postponed on the date declared for sale at an immediately preceding
7 postponement of sale, and, the postponement is for a period that
8 exceeds five business days from the date set forth in the notice of
9 sale, or declared at the time of postponement, then the right of
10 reinstatement is revived as of the date of postponement and shall
11 continue from that date until five business days prior to the date
12 of sale declared at the time of the postponement.

13 Nothing contained herein shall give rise to a right of
14 reinstatement during the period of five business days prior to the
15 date of sale, whether the date of sale is noticed in a notice of sale
16 or declared at a postponement of sale.

17 Pursuant to the terms of this subdivision, no beneficiary, trustee,
18 mortgagee, or their agents or successors shall be liable in any
19 manner to a trustor, mortgagor, their agents or successors or any
20 beneficiary under a subordinate deed of trust or mortgage or any
21 other person having a subordinate lien or encumbrance of record
22 thereon for the failure to allow a reinstatement of the obligation
23 secured by a deed of trust or mortgage during the period of five
24 business days prior to the sale of the security property, and no such
25 right of reinstatement during this period is created by this section.
26 Any right of reinstatement created by this section is terminated
27 five business days prior to the date of sale set forth in the initial
28 date of sale, and is revived only as prescribed herein and only as
29 of the date set forth herein.

30 As used in this subdivision, the term “business day” has the same
31 meaning as specified in Section 9.

32 ~~SEC. 6:~~

33 *SEC. 4.* Section 2924d of the Civil Code is amended to read:

34 2924d. (a) Commencing with the date that the notice of sale
35 is deposited in the mail, as provided in Section 2924b, and until
36 the property is sold pursuant to the power of sale contained in the
37 mortgage or deed of trust, a beneficiary, trustee, mortgagee, or his
38 or her agent or successor in interest, may demand and receive from
39 a trustor, mortgagor, or his or her agent or successor in interest,
40 or any beneficiary under a subordinate deed of trust, or any other

1 person having a subordinate lien or encumbrance of record those
2 reasonable costs and expenses, to the extent allowed by subdivision
3 (c) of Section 2924c, that are actually incurred in enforcing the
4 terms of the obligation and trustee's or attorney's fees that are
5 hereby authorized to be in a base amount that does not exceed four
6 hundred seventy-five dollars (\$475) if the unpaid principal sum
7 secured is one hundred fifty thousand dollars (\$150,000) or less,
8 or four hundred ten dollars (\$410) if the unpaid principal sum
9 secured exceeds one hundred fifty thousand dollars (\$150,000),
10 plus 1 percent of any portion of the unpaid principal sum secured
11 exceeding fifty thousand dollars (\$50,000) up to and including one
12 hundred fifty thousand dollars (\$150,000), plus one-half of 1
13 percent of any portion of the unpaid principal sum secured
14 exceeding one hundred fifty thousand dollars (\$150,000) up to and
15 including five hundred thousand dollars (\$500,000), plus
16 one-quarter of 1 percent of any portion of the unpaid principal sum
17 secured exceeding five hundred thousand dollars (\$500,000). For
18 purposes of this subdivision, the unpaid principal sum secured
19 shall be determined as of the date the notice of default is recorded.
20 Any charge for trustee's or attorney's fees authorized by this
21 subdivision shall be conclusively presumed to be lawful and valid
22 where that charge does not exceed the amounts authorized herein.
23 Any charge for trustee's or attorney's fees made pursuant to this
24 subdivision shall be in lieu of and not in addition to those charges
25 authorized by subdivision (d) of Section 2924c.

26 (b) Upon the sale of property pursuant to a power of sale, a
27 trustee, or his or her agent or successor in interest, may demand
28 and receive from a beneficiary, or his or her agent or successor in
29 interest, or may deduct from the proceeds of the sale, those
30 reasonable costs and expenses, to the extent allowed by subdivision
31 (c) of Section 2924c, that are actually incurred in enforcing the
32 terms of the obligation and trustee's or attorney's fees that are
33 hereby authorized to be in an amount which does not exceed four
34 hundred twenty-five dollars (\$425) or 1 percent of the unpaid
35 principal sum secured, whichever is greater. For purposes of this
36 subdivision, the unpaid principal sum secured shall be determined
37 as of the date the notice of default is recorded. Any charge for
38 trustee's or attorney's fees authorized by this subdivision shall be
39 conclusively presumed to be lawful and valid where that charge
40 does not exceed the amount authorized herein. Any charges for

1 trustee's or attorney's fees made pursuant to this subdivision shall
2 be in lieu of and not in addition to those charges authorized by
3 subdivision (a) of this section and subdivision (d) of Section 2924c.

4 (c) (1) No person shall pay or offer to pay or collect any rebate
5 or kickback for the referral of business involving the performance
6 of any act required by this article.

7 (2) Any person who violates this subdivision shall be liable to
8 the trustor for three times the amount of any rebate or kickback,
9 plus reasonable attorney's fees and costs, in addition to any other
10 remedies provided by law.

11 (3) No violation of this subdivision shall affect the validity of
12 a sale in favor of a bona fide purchaser or the rights of an
13 encumbrancer for value without notice.

14 (d) It shall not be unlawful for a trustee to pay or offer to pay a
15 fee to an agent or subagent of the trustee for work performed by
16 the agent or subagent in discharging the trustee's obligations under
17 the terms of the deed of trust. Any payment of a fee by a trustee
18 to an agent or subagent of the trustee for work performed by the
19 agent or subagent in discharging the trustee's obligations under
20 the terms of the deed of trust shall be conclusively presumed to
21 be lawful and valid if the fee, when combined with other fees of
22 the trustee, does not exceed in the aggregate the trustee's fee
23 authorized by subdivision (d) of Section 2924c or subdivision (a)
24 or (b) of this section.

25 (e) When a court issues a decree of foreclosure, it shall have
26 discretion to award attorney's fees, costs, and expenses as are
27 reasonable, if provided for in the note, deed of trust, or mortgage,
28 pursuant to Section 580c of the Code of Civil Procedure.

29 ~~SEC. 7. Section 2924f of the Civil Code is amended to read:~~

30 ~~2924f. (a) As used in this section and Sections 2924g and~~
31 ~~2924h, "property" means real property or a leasehold estate therein;~~
32 ~~and "calendar week" means Monday through Saturday, inclusive.~~

33 ~~(b) (1) Except as provided in subdivision (c), before any sale~~
34 ~~of property can be made under the power of sale contained in any~~
35 ~~deed of trust or mortgage, or any resale resulting from a rescission~~
36 ~~for a failure of consideration pursuant to subdivision (c) of Section~~
37 ~~2924h, notice of the sale thereof shall be given by posting a written~~
38 ~~notice of the time of sale and of the street address and the specific~~
39 ~~place at the street address where the sale will be held, and~~
40 ~~describing the property to be sold, at least 20 days before the date~~

1 of sale in one public place in the city where the property is to be
2 sold, if the property is to be sold in a city, or, if not, then in one
3 public place in the judicial district in which the property is to be
4 sold, and publishing a copy once a week for three consecutive
5 calendar weeks.

6 (2) ~~The first publication to be at least 20 days before the date~~
7 ~~of sale, in a newspaper of general circulation published in the city~~
8 ~~in which the property or some part thereof is situated, if any part~~
9 ~~thereof is situated in a city, if not, then in a newspaper of general~~
10 ~~circulation published in the judicial district in which the property~~
11 ~~or some part thereof is situated, or in case no newspaper of general~~
12 ~~circulation is published in the city or judicial district, as the case~~
13 ~~may be, in a newspaper of general circulation published in the~~
14 ~~county in which the property or some part thereof is situated, or~~
15 ~~in case no newspaper of general circulation is published in the city~~
16 ~~or judicial district or county, as the case may be, in a newspaper~~
17 ~~of general circulation published in the county in this state that is~~
18 ~~contiguous to the county in which the property or some part thereof~~
19 ~~is situated and has, by comparison with all similarly contiguous~~
20 ~~counties, the highest population based upon total county population~~
21 ~~as determined by the most recent federal decennial census~~
22 ~~published by the Bureau of the Census.~~

23 (3) ~~A copy of the notice of sale shall also be posted in a~~
24 ~~conspicuous place on the property to be sold at least 20 days before~~
25 ~~the date of sale, where possible and where not restricted for any~~
26 ~~reason. If the property is a single-family residence the posting shall~~
27 ~~be on a door of the residence, but, if not possible or restricted, then~~
28 ~~the notice shall be posted in a conspicuous place on the property;~~
29 ~~however, if access is denied because a common entrance to the~~
30 ~~property is restricted by a guard gate or similar impediment, the~~
31 ~~property may be posted at that guard gate or similar impediment~~
32 ~~to any development community.~~

33 (4) ~~The notice of sale shall conform to the minimum~~
34 ~~requirements of Section 6043 of the Government Code and be~~
35 ~~recorded with the county recorder of the county in which the~~
36 ~~property or some part thereof is situated at least 20 days prior to~~
37 ~~the date of sale.~~

38 (5) ~~The notice of sale shall contain the name, street address in~~
39 ~~this state, which may reflect an agent of the trustee, and either a~~
40 ~~toll-free telephone number or telephone number in this state of the~~

1 trustee, and the name of the original trustor, and also shall contain
2 the statement required by paragraph (3) of subdivision (c). In
3 addition to any other description of the property, the notice shall
4 describe the property by giving its street address, if any, or other
5 common designation, if any, and a county assessor's parcel
6 number; but if the property has no street address or other common
7 designation, the notice shall contain a legal description of the
8 property, the name and address of the beneficiary at whose request
9 the sale is to be conducted, and a statement that directions may be
10 obtained pursuant to a written request submitted to the beneficiary
11 within 10 days from the first publication of the notice. Directions
12 shall be deemed reasonably sufficient to locate the property if
13 information as to the location of the property is given by reference
14 to the direction and approximate distance from the nearest
15 crossroads, frontage road, or access road. If a legal description or
16 a county assessor's parcel number and either a street address or
17 another common designation of the property is given, the validity
18 of the notice and the validity of the sale shall not be affected by
19 the fact that the street address, other common designation, name
20 and address of the beneficiary, or the directions obtained therefrom
21 are erroneous or that the street address, other common designation,
22 name and address of the beneficiary, or directions obtained
23 therefrom are omitted.

24 (6) The term "newspaper of general circulation," as used in this
25 section, has the same meaning as defined in Article 1 (commencing
26 with Section 6000) of Chapter 1 of Division 7 of Title 1 of the
27 Government Code.

28 (7) The notice of sale shall contain a statement of the total
29 amount of the unpaid balance of the obligation secured by the
30 property to be sold and reasonably estimated costs, expenses,
31 advances at the time of the initial publication of the notice of sale,
32 and, if republished pursuant to a cancellation of a cash equivalent
33 pursuant to subdivision (d) of Section 2924h, a reference of that
34 fact; provided, that the trustee shall incur no liability for any good
35 faith error in stating the proper amount, including any amount
36 provided in good faith by or on behalf of the beneficiary. An
37 inaccurate statement of this amount shall not affect the validity of
38 any sale to a bona fide purchaser for value, nor shall the failure to
39 post the notice of sale on a door as provided by this subdivision
40 affect the validity of any sale to a bona fide purchaser for value.

1 ~~(8) (A) On and after April 1, 2012, if the deed of trust or~~
2 ~~mortgage containing a power of sale is secured by real property~~
3 ~~containing from one to four single-family residences, the notice~~
4 ~~of sale shall contain substantially the following language, in~~
5 ~~addition to the language required pursuant to paragraphs (1) to (7),~~
6 ~~inclusive:~~

7
8 ~~NOTICE TO POTENTIAL BIDDERS: If you are considering~~
9 ~~bidding on this property, you should understand that there are risks~~
10 ~~involved in bidding at a trustee auction. Placing the highest bid at~~
11 ~~a trustee auction does not automatically entitle you to free and~~
12 ~~clear ownership of the property. You should also be aware that the~~
13 ~~lien being foreclosed by this auction may be a junior lien. If you~~
14 ~~are the highest bidder at the auction, you are or may be responsible~~
15 ~~for paying off all liens senior to the lien being foreclosed, before~~
16 ~~you can receive clear title to the property. You are encouraged to~~
17 ~~investigate the existence, priority, and size of outstanding liens~~
18 ~~that may exist on this property by contacting the county recorder's~~
19 ~~office or a title insurance company, either of which may charge~~
20 ~~you a fee for this information. If you consult either of these~~
21 ~~resources, you should be aware that the same lender may hold~~
22 ~~more than one mortgage or deed of trust on the property.~~

23
24 ~~NOTICE TO PROPERTY OWNER: The sale date shown on~~
25 ~~this notice of sale may be postponed one or more times by the~~
26 ~~mortgagee, beneficiary, trustee, or a court, pursuant to Section~~
27 ~~2924g of the California Civil Code. The law requires that~~
28 ~~information about trustee sale postponements be made available~~
29 ~~to you and to the public, as a courtesy to those not present at the~~
30 ~~sale. If you wish to learn whether your sale date has been~~
31 ~~postponed, and, if applicable, the rescheduled time and date for~~
32 ~~the sale of this property, you may call [telephone number for~~
33 ~~information regarding the trustee's sale] or visit this Internet Web~~
34 ~~site [Internet Web site address for information regarding the sale~~
35 ~~of this property], using the file number assigned to this case [case~~
36 ~~file number]. Information about postponements that are very short~~
37 ~~in duration or that occur close in time to the scheduled sale may~~
38 ~~not immediately be reflected in the telephone information or on~~
39 ~~the Internet Web site. The best way to verify postponement~~
40 ~~information is to attend the scheduled sale.~~

1
2 ~~(B) A mortgagee, beneficiary, trustee, or authorized agent shall~~
3 ~~make a good faith effort to provide up-to-date information~~
4 ~~regarding sale dates and postponements to persons who wish this~~
5 ~~information. This information shall be made available free of~~
6 ~~charge. It may be made available via an Internet Web site, a~~
7 ~~telephone recording that is accessible 24 hours a day, seven days~~
8 ~~a week, or through any other means that allows 24 hours a day,~~
9 ~~seven days a week, no-cost access to updated information. A~~
10 ~~disruption of any of these methods of providing sale date and~~
11 ~~postponement information to allow for reasonable maintenance or~~
12 ~~due to a service outage shall not be deemed to be a violation of~~
13 ~~the good faith standard.~~

14 ~~(C) Except as provided in subparagraph (B), nothing in the~~
15 ~~wording of the notices required by subparagraph (A) is intended~~
16 ~~to modify or create any substantive rights or obligations for any~~
17 ~~person providing, or specified in, either of the required notices.~~
18 ~~Failure to comply with subparagraph (A) or (B) shall not invalidate~~
19 ~~any sale that would otherwise be valid under this section.~~

20 ~~(D) Information provided pursuant to subparagraph (A) does~~
21 ~~not constitute the public declaration required by subdivision (d)~~
22 ~~of Section 2924g.~~

23 ~~(9) If the sale of the property is to be a unified sale as provided~~
24 ~~in subparagraph (B) of paragraph (1) of subdivision (a) of Section~~
25 ~~9604 of the Commercial Code, the notice of sale shall also contain~~
26 ~~a description of the personal property or fixtures to be sold. In the~~
27 ~~case where it is contemplated that all of the personal property or~~
28 ~~fixtures are to be sold, the description in the notice of the personal~~
29 ~~property or fixtures shall be sufficient if it is the same as the~~
30 ~~description of the personal property or fixtures contained in the~~
31 ~~agreement creating the security interest in or encumbrance on the~~
32 ~~personal property or fixtures or the filed financing statement~~
33 ~~relating to the personal property or fixtures. In all other cases, the~~
34 ~~description in the notice shall be sufficient if it would be a~~
35 ~~sufficient description of the personal property or fixtures under~~
36 ~~Section 9108 of the Commercial Code. Inclusion of a reference to~~
37 ~~or a description of personal property or fixtures in a notice of sale~~
38 ~~hereunder shall not constitute an election by the secured party to~~
39 ~~conduct a unified sale pursuant to subparagraph (B) of paragraph~~
40 ~~(1) of subdivision (a) of Section 9604 of the Commercial Code,~~

1 shall not obligate the secured party to conduct a unified sale
2 pursuant to subparagraph (B) of paragraph (1) of subdivision (a)
3 of Section 9604 of the Commercial Code, and in no way shall
4 render defective or noncomplying either that notice or a sale
5 pursuant to that notice by reason of the fact that the sale includes
6 none or less than all of the personal property or fixtures referred
7 to or described in the notice. This paragraph shall not otherwise
8 affect the obligations or duties of a secured party under the
9 Commercial Code.

10 (e) (1) This subdivision applies only to deeds of trust or
11 mortgages that contain a power of sale and that are secured by real
12 property containing a single-family, owner-occupied residence,
13 where the obligation secured by the deed of trust or mortgage is
14 contained in a contract for goods or services subject to the
15 provisions of the Unruh Act (Chapter 1 (commencing with Section
16 1801) of Title 2 of Part 4 of Division 3).

17 (2) Except as otherwise expressly set forth in this subdivision,
18 all other provisions of law relating to the exercise of a power of
19 sale shall govern the exercise of a power of sale contained in a
20 deed of trust or mortgage described in paragraph (1).

21 (3) If any default of the obligation secured by a deed of trust or
22 mortgage described in paragraph (1) has not been cured within 30
23 days after the recordation of the notice of default, the trustee or
24 mortgagee shall mail to the trustor or mortgagor, at his or her last
25 known address, a copy of the following statement:

26
27 YOU ARE IN DEFAULT UNDER A

28 _____,
29 (Deed of trust or mortgage)

30 DATED _____. UNLESS YOU TAKE ACTION TO PROTECT
31 YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF
32 YOU NEED AN EXPLANATION OF THE NATURE OF THE
33 PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A
34 LAWYER.

35
36 (4) All sales of real property pursuant to a power of sale
37 contained in any deed of trust or mortgage described in paragraph
38 (1) shall be held in the county where the residence is located and
39 shall be made to the person making the highest offer. The trustee
40 may receive offers during the 10-day period immediately prior to

1 the date of sale and if any offer is accepted in writing by both the
2 trustor or mortgagor and the beneficiary or mortgagee prior to the
3 time set for sale, the sale shall be postponed to a date certain and
4 prior to which the property may be conveyed by the trustor to the
5 person making the offer according to its terms. The offer is
6 revocable until accepted. The performance of the offer, following
7 acceptance, according to its terms, by a conveyance of the property
8 to the offeror, shall operate to terminate any further proceeding
9 under the notice of sale and it shall be deemed revoked.

10 (5) In addition to the trustee fee pursuant to Section 2924e, the
11 trustee or mortgagee pursuant to a deed of trust or mortgage subject
12 to this subdivision shall be entitled to charge an additional fee of
13 fifty dollars (\$50).

14 (6) This subdivision applies only to property on which notices
15 of default were filed on or after the effective date of this
16 subdivision.

17 (d) With respect to residential real property containing no more
18 than four dwelling units, a separate document containing a
19 summary of the notice of sale information in English and the
20 languages described in Section 1632 shall be attached to the notice
21 of sale provided to the mortgagor or trustor pursuant to Section
22 2923.3.

23 SEC. 8.

24 SEC. 5. Section 2934a of the Civil Code is amended to read:

25 2934a. (a) (1) The trustee under a trust deed upon real property
26 or an estate for years therein given to secure an obligation to pay
27 money and conferring no other duties upon the trustee than those
28 which are incidental to the exercise of the power of sale therein
29 conferred, may be substituted by the recording in the county in
30 which the property is located of a substitution executed and
31 acknowledged by: (A) all of the beneficiaries under the trust deed,
32 or their successors in interest, and the substitution shall be effective
33 notwithstanding any contrary provision in any trust deed executed
34 on or after January 1, 1968; or (B) the holders of more than 50
35 percent of the record beneficial interest of a series of notes secured
36 by the same real property or of undivided interests in a note secured
37 by real property equivalent to a series transaction, exclusive of
38 any notes or interests of a licensed real estate broker that is the
39 issuer or servicer of the notes or interests or of any affiliate of that
40 licensed real estate broker.

1 (2) A substitution executed pursuant to subparagraph (B) of
2 paragraph (1) is not effective unless all the parties signing the
3 substitution sign, under penalty of perjury, a separate written
4 document stating the following:

5 (A) The substitution has been signed pursuant to subparagraph
6 (B) of paragraph (1).

7 (B) None of the undersigned is a licensed real estate broker or
8 an affiliate of the broker that is the issuer or servicer of the
9 obligation secured by the deed of trust.

10 (C) The undersigned together hold more than 50 percent of the
11 record beneficial interest of a series of notes secured by the same
12 real property or of undivided interests in a note secured by real
13 property equivalent to a series transaction.

14 (D) Notice of the substitution was sent by certified mail, postage
15 prepaid, with return receipt requested to each holder of an interest
16 in the obligation secured by the deed of trust who has not joined
17 in the execution of the substitution or the separate document.

18 The separate document shall be attached to the substitution and
19 be recorded in the office of the county recorder of each county in
20 which the real property described in the deed of trust is located.
21 Once the document required by this paragraph is recorded, it shall
22 constitute conclusive evidence of compliance with the requirements
23 of this paragraph in favor of substituted trustees acting pursuant
24 to this section, subsequent assignees of the obligation secured by
25 the deed of trust and subsequent bona fide purchasers or
26 encumbrancers for value of the real property described therein.

27 (3) For purposes of this section, “affiliate of the licensed real
28 estate broker” includes any person as defined in Section 25013 of
29 the Corporations Code that is controlled by, or is under common
30 control with, or who controls, a licensed real estate broker.
31 “Control” means the possession, direct or indirect, of the power
32 to direct or cause the direction of management and policies.

33 (4) The substitution shall contain the date of recordation of the
34 trust deed, the name of the trustor, the book and page or instrument
35 number where the trust deed is recorded, and the name of the new
36 trustee. From the time the substitution is filed for record, the new
37 trustee shall succeed to all the powers, duties, authority, and title
38 granted and delegated to the trustee named in the deed of trust. A
39 substitution may be accomplished, with respect to multiple deeds
40 of trust which are recorded in the same county in which the

1 substitution is being recorded and which all have the same trustee
2 and beneficiary or beneficiaries, by recording a single document,
3 complying with the requirements of this section, substituting
4 trustees for all those deeds of trust.

5 (b) If the substitution is executed, but not recorded, prior to or
6 concurrently with the recording of the notice of default, the
7 beneficiary or beneficiaries or their authorized agents shall cause
8 notice of the substitution to be mailed prior to or concurrently with
9 the recording thereof, in the manner provided in Section 2924b,
10 to all persons to whom a copy of the notice of default would be
11 required to be mailed by the provisions of Section 2924b. An
12 affidavit shall be attached to the substitution that notice has been
13 given to those persons and in the manner required by this
14 subdivision.

15 (c) If the substitution is effected after a notice of default has
16 been recorded but prior to the recording of the notice of sale, the
17 beneficiary or beneficiaries or their authorized agents shall cause
18 a copy of the substitution to be mailed, prior to, or concurrently
19 with, the recording thereof, in the manner provided in Section
20 2924b, to the trustee then of record and to all persons to whom a
21 copy of the notice of default would be required to be mailed by
22 the provisions of Section 2924b. An affidavit shall be attached to
23 the substitution that notice has been given to those persons and in
24 the manner required by this subdivision.

25 (d) (1) A trustee named in a recorded substitution of trustee
26 shall be deemed to be authorized to act as the trustee under the
27 mortgage or deed of trust for all purposes from the date the
28 substitution is executed by the mortgagee, beneficiaries, or by their
29 authorized agents. Nothing herein requires that a trustee under a
30 recorded substitution accept the substitution. Once recorded, the
31 substitution shall constitute conclusive evidence of the authority
32 of the substituted trustee or his or her agents to act pursuant to this
33 section.

34 (2) A trustee named in a recorded substitution of trustee shall
35 not be a legal owner or owner, as applicable, for purposes of
36 Section 2929.3 or 2929.4.

37 (e) Notwithstanding any provision of this section or any
38 provision in any deed of trust, unless a new notice of sale
39 containing the name, street address, and telephone number of the
40 substituted trustee is given pursuant to Section 2924f after

- 1 execution of the substitution, any sale conducted by the substituted
- 2 trustee shall be void.
- 3 (f) This section shall become operative on January 1, 1998.

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